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South Carolina House of Representatives

# Legislative Update

Robert J. Sheheen, Speaker of the House

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### House Week in Review

A number of bills received 3rd reading last week. Among these bills were H. 3372, a bill providing local governments with factors to consider when entering into a development agreement with a developer; H. 3455, which deletes the requirement that, among other requirements, a veteran must be a state resident for 18 years in order for his or her child to qualify for free tuition in state institutions of higher learning; and H. 3596, which raises maximum school bus speeds under certain conditions from 35 to 45 MPH. The House also gave 3rd reading to H. 3059, which moves the final adjournment date of the General Assembly from the first Thursday in June to the second Tuesday in May. A motion to table the bill was defeated by a vote of 81 to 6.

Among measures receiving 2nd reading approval last week were H. 3333, which repeals current law requiring highway patrol officers to retire at age 62; H. 3648, which directs the Department of Archives and History to establish the South Carolina African-American Heritage Council; and H. 3761, which authorizes the Budget and Control Board to issue capital improvement bonds in denominations of less than \$1,000. H. 3761 is designed to encourage parents to purchase bonds so as to save for their children's college education and to also encourage saving for retirement.

As the House adjourned for the week last Thursday, several bills remained on the contested calendar. Among those bills were H. 3310, which requires a student to be age 6 by September 1, as currently opposed to November 1, in order to enroll in the first grade; H. 3281, which abolishes mandatory vehicle safety inspections; and H. 3129, which renames Coastal Carolina College as "Coastal Carolina University and provides that as of this July this institution will be a separate and distinct institution of higher learning. (Currently, Coastal Carolina is a regional branch of the University of South Carolina.)

On Tuesday, the General Assembly ratified several acts, including S. 60, which revises educational and other requirements for sheriffs, and H. 3436, which requires children to be vaccinated or immunized before enrolling in a public or private day care facility.

This Friday, April 30, is a legislative deadline in both the House and Senate for reception of bills from the other chamber. Under House Rule 5.12, no statewide bill or resolution (except an appropriations bill or a resolution approving or disapproving regulations of a state

agency) introduced in the Senate may be considered by the House unless the bill or resolution is received by the House by April 30. Senate Rule 49 requires that a statewide bill or resolution (except general and special appropriations) introduced in the House must be received by the Senate no later than April 30 in order to be considered by the Senate this year.



## Legislative Update, April 27, 1993

### Bills Introduced

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The following bills were introduced in the House last week. Not all bills introduced in the House are featured here. The bills are listed according to the standing committee to which they were referred.

### Education and Public Works

Removal of Exceptions Under State's Compulsory School Attendance Law (S. 352). This bill provides that the state's compulsory school attendance law does apply to a child who is or has been married, an unmarried child who is pregnant, or a child who has had a child out of wedlock.

Revisions to Educational Facilities Authority Act (S. 702, Senate Education Committee). This bill revises and adds definitions under the Educational Facilities Act for Private Nonprofit Institutions of Higher Learning. The bill also allows the authority to enter into financial agreements with institutions for higher learning and lists procedures and conditions governing these agreements.

### Judiciary

Protection from Compelled Testimony for News Media (S. 235, Sen. McConnell). This bill provides protection from compelled testimony or production of documents for a person, company or entity who or which is engaged or has been engaged in gathering and disseminating news for the public through a medium (television, radio, etc.). Under these provisions, the person, company or entity is protected from compelled testimony or production of information in a judicial, legislative or administrative proceeding if not a party to the proceeding. Protection under these provisions does not apply, however, if the information sought (1) was not obtained upon a promise of confidentiality; (2) is material and highly relevant to the controversy for which the testimony or production is sought; (3) reasonably cannot be obtained by alternative means or

alternative source; and (4) is vital to the preparation or presentation of the case of the party seeking the information. Nor does protection from compelled testimony or production of information apply regarding information pertaining to commission of a capital crime. Publication of any information, document or item obtained or prepared in gathering and disseminating news does not waive the protection against compelled disclosure.

### **Labor, Commerce and Industry**

**Insurance Coverage for Cleft Lip and Palate** (S. 26, Sen. Holland). This bill requires any individual or group accident and health policy which provides dependent coverage also to provide coverage for the medically necessary care of cleft lip and palate, and any condition or illness related to or developed as a result of cleft lip and palate. Individual or group dental policies providing dependent coverage must provide coverage for teeth capping, prosthodontics and orthodontics necessary for the coverage of cleft lip and palate. The bill lists policies for which these provisions do not apply and provides that these provisions apply to all policies delivered, issued, renewed, extended or modified by an insurer 6 months or later from when these provisions go into effect.

**Life Insurance Policies not Subject to Claims of Insured's Creditors** (S. 545, Sen. Saleeby). Under this bill, proceeds and cash surrender values of life insurance, payable to a beneficiary other than the insured's estate in which these proceeds and values are expressed to be for the primary benefit of the insured's spouse, children or dependents, are exempt from creditors of the insured. These provisions apply whether or not the right to change a beneficiary is reserved and whether or not the policy is payable to the insured, except under limited conditions as listed in the bill. The bill also provides that proceeds of life insurance or annuity contracts, by agreement, may be held by the insurer exempt from claims of the beneficiary's creditors. Additionally, proceeds of group life insurance contracts, and benefits of accident and disability contracts, are exempt from claims of the creditors of the insured.

### **Medical, Military, Public and Municipal Affairs**

**Conditions for Adopting Child in Custody of Department of Social Services** (H. 4139, Rep. Stone). This bill provides conditions under which a child in the legal custody of the Department of Social Services (DSS) may be adopted. Additionally, the bill lists conditions which foster parents who wish to adopt a child in the custody of DSS and who are licensed by DSS must meet before filing a petition to adopt the child.



**Eligibility for Work Release** (H. 4140, Rep. Wilkins). This bill lists conditions under which a prisoner convicted of a state offense and sentenced to the custody of the Department of Corrections is eligible for work release. The bill requires a prisoner who is considered "violent" to have served 60 percent of his sentence, and a "nonviolent" prisoner to have served 50 percent of his sentence, before being eligible for work release. These provisions do not apply, however, in cases of emergency prison overcrowding as provided under the Prison Overcrowding Powers Act.

### **Ways and Means**

**Mandates** (S. 228, Sen. McGill). Under this bill, a general law passed by the General Assembly which requires a county to expend funds or take an action requiring these expenditures is not binding on the county unless: (1) the General Assembly has determined that the law fulfills a state interest; and (2) the law requiring the expenditure is approved by either a two-thirds (2/3) vote of members voting in the House and the Senate, or, in other cases, by a majority of members voting in each chamber. The bill lists conditions under which only a majority is required to impose the mandate; for example, only a simple majority is required if the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments.

The bill also prohibits the General Assembly, except by a two-thirds (2/3) vote of each of its chambers, from enacting, amending or repealing a general law if the anticipated effect would be to reduce the authority counties have to raise revenues in the aggregate, as the authority exists on July 1, 1993. The bill also lists bills and acts which are exempt from these provisions; as examples, these provisions do not apply to criminal laws, election laws, or general or special appropriations acts.

**Environmental Protection Fund** (S. 418, Sen. V. Smith). This bill establishes the South Carolina Environmental Protection Fund, which is a special account within the state treasurer's office. The fund must be available to the Department of Health and Environmental Control to help defray the costs of administering the regulatory programs under the Pollution Control Act; Clean Air Act; Safe Drinking Water Act; Hazardous Waste Management Act; Atomic Energy Act; Oil and Gas Act; and any environmental program for which applicable federal law requires establishment and collection of fees. This account must be funded by fees, including but not limited to fees for environmental permits, certificates and registrations, required by the Department pursuant to the acts listed above. The bill lists the maximum fees which can be imposed for anyone seeking to engage in activities affected by the acts and provides a process by which a person who disagrees with the calculation or applicability of a fee may appeal the fee assessed.



**Creation of Pee Dee Authority** (S. 643, Senate Labor, Commerce and Industry Committee). This bill creates the Pee Dee Authority. The governing board of this authority consists of 15 members, appointed by the governor with the advice and consent of the Senate. Of the 15 members of the authority, 1 is an at-large member, and the remaining 14 are appointed from counties in the Pee Dee Area, with 1 member appointed from each of the following counties: Chesterfield, Clarendon, Darlington, Dillon, Florence, Georgetown, Horry, Kershaw, Lancaster, Lee, Marion, Marlboro, Sumter and Williamsburg. The bill also provides for selection of the board's chairman and vice chairman.

The powers and duties of the authority's board are listed. As examples, the board may assist and promote in the development of the Pee Dee River and waterways entering the river; may negotiate agreements, accords or compacts in the name of South Carolina with North Carolina or the United States; may act as a regional development agency of the state; may purchase property through negotiation or condemnation; and may borrow money and make and issue notes.

The bill permits the authority to issue revenue bonds for the purpose of raising funds needed for financing and refinancing the acquisition, construction, equipment, maintenance and operation of a facility which the authority is authorized to acquire, construct, equip, maintain or operate. Revenue bonds issued under these provisions must be authorized by resolution of the board of the authority, but no bonds may be issued until the proposal of the board to issue bonds is approved by the State Budget and Control Board. The bill lists provisions pertaining to the issuance of bonds.

The bill permits the authority to retain unexpended funds at the close of the state's fiscal year, regardless of the source of the funds, and expend the funds in subsequent fiscal years. The bill also provides that the property of the authority is not subject to taxes or assessments, but the authority must negotiate a payment in lieu of taxes with appropriate taxing authorities.

#### **Without Reference**

**Fees Allowed Certain Industrial Projects** (S. 595, Sen. Drummond). This bill revises the manner in which and conditions under which fees in lieu of taxes are authorized for certain industrial projects. As an example, the bill provides that the minimum \$85 million threshold necessary to qualify for the fee arrangement may not be reduced except by an affirmative vote in both the House and the Senate by 2/3 of each chamber's members present and voting, with at least 3/5 of each chamber's members present for this vote.

**Commission on Prosecution Coordination** (S. 694, Sen. Holland). This bill permits the Commission on Prosecution Coordination to promulgate regulations necessary to assist the Commission in

performing as required duties. Additionally, the bill provides that the State's Classification and Compensation Plan does not apply to employees of the Commission.



### **Summary: No Fault Choice Automobile Insurance**

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The following is the latest summary of H. 3246, the No Fault Choice automobile insurance bill, as reported out of the House Labor, Commerce and Industry Committee. The bill is similar to a version (H. 4521) which the committee approved during the 1991-92 session but which failed to come to a vote in the House last year. This bill will be up for debate before the full House this week. Thanks is given to the staff of the LCI Committee for providing this summary.

### **H. 3246**

### **CONSUMER FREEDOM OF CHOICE IN MOTOR VEHICLE INSURANCE (As Amended)**

**AMENDMENT:** The proposed amendment makes the following changes in the bill:

(1) Rewrites Section 19 by replacing the self-sustaining JUA (Joint Underwriting Association) and its 4 rate tiers with language requiring that all business ceded to the Facility be ceded at the Facility rate ("DAs rate") or the individual company's filed rate, whichever is greater, phased in over a 2-year period. (This is the same language adopted by the full committee on April 6, 1993 and added to S. 525, pending on the House calendar, in an effort to reduce Reinsurance Facility losses and lower recoupment fees.)

(2) Retains Reinsurance Facility and makes all other "clean-up" changes within the bill to remove all references to JUA, which include:

(a) correcting Section 27 (Repeal Provision) to remove the statutes governing and relating to the Facility which must be maintained.

(b) strikes Section 24 of H. 3246, requiring competitive basis for JUA administration; providing that no new designated agents may be appointed after July 1, 1994; and providing that commissions paid agents for policies ceded to or placed in the joint underwriting facility must be set by the association's board of directors.

## **SECTION (§)**

### **§1: NO FAULT POLICY PROVISIONS**

--Gives motorists the opportunity to buy no-fault coverage or refuse it and retain tort liability coverage.

--Mandates initial no-fault premiums to be at least 15 percent lower than tort liability coverage for similar insureds. Freezes no-fault rates from January 1, 1994 to December 31, 1994.

--Minimum limits on no-fault are \$15,000 per person:

--medical expenses;

--up to \$200 per week for loss of income;

--up to \$100 per week for replacement services;

--\$5,000 death benefit.

--No-fault policies include mandatory 15/30/5 coverage.

### **§2: NO INCREASE IN PREMIUM IF NOT AT-FAULT IN ACCIDENT**

--Prohibits an insurer from increasing premiums for a liability insurance policy because of a claim filed by the insured as a result of an accident for which he was not at-fault.

### **§3: NO-FAULT/TECHNICAL CHANGE**

--Amends definition of automobile insurance to include no-fault policies.

### **§4: NO-FAULT/MAXIMUM LIMITS INSURER MANDATED TO WRITE**

--Provides that no insurer is required to write no-fault coverages with limits higher than \$250,000 for additional no-fault coverage. Provides that this may include--for an additional fee at the request of the insured--more than \$200 a week for loss of income and more than \$100 a week for replacement services cost.

### **§5: COLLATERAL SOURCE FILE**

--Provides for juries to deduct from verdict any amount paid to the injured non-at-fault party from a collateral source.

### **§6: MANDATE TO WRITE PHYSICAL DAMAGE COVERAGES**

--Repeals the mandate to write physical damage coverages for an applicant or existing policyholder effective September 30, 1996.

### **§7: PUNITIVE DAMAGES/EXCLUDED FROM DEFINITION OF DAMAGES**

--Amends the definition of "damages" to delete "punitive" and limit mandatory insurance coverage to



actual damages only.

**\$8: PUNITIVE DAMAGES/OPTIONAL COVERAGE**

--Removes punitive damage from mandatory insurance coverage. **\*\*1.5% mandated minimum rate deduction.**

--Requires insurers to offer optional punitive damages coverage.

**\$9 UNINSURED MOTORIST COVERAGE: STACKABLE/NONSTACKABLE**

--Provides for non-stackable uninsured motorist coverage. **\*\*15% mandated minimum rate reduction.**

--Allows companies to offer stackable uninsured motorist coverage.

--Makes benefits subject to assignment and subrogation.

**\$10 UNDERINSURED MOTORIST COVERAGE:  
STACKABLE/NONSTACKABLE**

--Provides for non-stackable underinsured motorist coverage. **\*\*18% mandated minimum rate reduction.**

--Allows companies to offer stackable underinsured motorist coverage.

--Prohibits collection of uninsured benefits if entitled to underinsured benefits or collection of underinsured benefits of entitled to uninsured benefits.

--Makes benefits subject to assignment and subrogation.

**\$11-14: COMPULSORY INSURANCE/TECHNICAL CHANGES**

--Makes technical changes to current code sections to allow for drivers with a safe driver discount to pay the uninsured motorist fee established in Section 14.

**\$15: COMPULSORY INSURANCE/UNINSURED MOTORIST FEE**

--Allows persons with a safe driver discount to drive without insurance by paying \$250 into an uninsured motorist fund.

--Fund to be used to reduce recoupment fee until Facility phased out, then to finance driver safety measures and enforce uninsured motorist laws.

**\$16: MANDATE TO WRITE LIABILITY COVERAGES**

--Eliminates mandate to write liability coverages for persons without a safe drive discount.

**§17: ANTI-DISCRIMINATION CLAUSE**  
--Adds "income" to existing grounds on which an insurer may not refuse to write or renew automobile insurance coverage. Current grounds include race, color, creed, national origin or ancestry.

**§18: WRITTEN REASON FOR DENIAL OF COVERAGE**  
--Requires insurance company which denies an applicant coverage to tell the person in writing why he was turned down.

**(SECTION 19 REWRITTEN BY PROPOSED AMENDMENT)**

**§19: RATE FOR POLICIES CEDED TO FACILITY TO BE FACILITY RATE**  
--Provides that the rate for policies ceded to the facility is the facility rate ("DA's rate"), or the individual company's rate, to be phased-in over a 2-year period.

**SECTION 20 TECHNICAL CHANGES TO REFERENCES FROM JUA TO FACILITY**

**§20 FOUR-TIER RATING SYSTEM**  
--Replaces the current 2-tier system (base and objective standards) with 4 tiers:  
    (1) **Preferred:** Less than standard rate. Applicable to drivers with a safe driver discount.  
    (2) **Standard:** Approved "base" rate in effect on July 1, 1994. Applicable to drivers with a safe driver discount.  
    (3) **Non-preferred:** More than the standard rate but less than the substandard rate. Applicable to all risks.  
    (4) **Substandard:** More than non-preferred rate but less or equal to the standard rate by driver classification and territory for the Facility. Applicable to all risks.

--Persons with a 5-year clean driving record must be written at the preferred or standard rate and cannot be ceded to the Facility.

--Persons with a 10-year clean driving record must be written at the preferred rate and cannot be ceded to the Facility.

--Company or agent must provide written notice to the insured of the tier in which he is written and the reasons he was written at that tier.

**§21 NO SURCHARGE FOR CERTAIN VIOLATIONS**  
--Prohibits surcharges for: first offense speeding under 20 mph if the driver has had a safe driver



discount for the past 3 years; failing to dim lights; operating with improper brakes; or operating a vehicle in an unsafe condition.

(NOTE: H. 3425, which was introduced in the House earlier this year and which has since been ratified as an act of law, contains in Section 2 a prohibition against an increase for first offense violations for first offense violations for: failing to dim lights; operating with improper lights; operating with improper brakes; and operating a vehicle in unsafe condition for violations occurring after June 30, 1993.)

## **§22**

### **PENALTIES FOR DRIVING UNINSURED**

--Increases fines for knowingly operating an uninsured vehicle and adds an optional public service penalty.

#### **FIRST OFFENSE**

- Increases optional minimum fine from \$100 to \$200.
- Increases optional maximum fine from \$200 to \$300.
- Retains 30 days in jail as an optional penalty.
- Adds up to 50 hours public service as an optional penalty.
- Allows a combination of the above as the penalty.
- Retains current 30-day license suspension.

#### **SECOND OFFENSE**

- Increases fine from \$200 to \$300.
- Retains 30 days in jail as an optional penalty.
- Adds up to 100 hours public service as an optional penalty.
- Allows a combination of the above as the penalty.
- Increases license suspension from 30 to 90 days.

#### **THIRD OFFENSE**

- Adds a fine of \$400 as an optional penalty.
- Retains 45 days to 6 months in jail as an optional penalty.
- Adds up to 200 hours public service as an optional penalty.
- Allows a combination of the above as the penalty.
- Increases license suspension from 30 days to 6 months.

- §23 AGENTS TO REVIEW FINES, OFFENSES WITH NEW INSURED**  
--Requires an agent to review with a new applicant a list of driving offenses and the related fine and punishment, as well as possible increases in rates, additional surcharges, or loss of the safe driver discount.

**(SECTION 24 DELETED BY PROPOSED AMENDMENT)**

**§24 JUA: COMPETITIVE BIDDING OF ADMINISTRATION: AGENT COMMISSION**

--Requires administration of JUA (Joint Underwriting Association) to be bid out on competitive basis.

--Provides that no new designated agents may be appointed after July 1, 1994.

--Commissions paid agents for policies ceded to or placed in the joint underwriting association must be set by the association's Board of Directors.

**§25 & 26 PROOF OF INSURANCE FOLLOWING MOVING VIOLATIONS**  
(Sections 25 and 26 are identical, except that Section 25 amends the Insurance Code, or Title 38, while Section 26 amends the Highway Department Code, or Title 56.)

--Requires officers to give a driver issued a ticket for a moving violation an insurance verification form, to be completed and returned to the Highway Department by the driver.

**(SECTION 27 TECHNICAL CHANGE REMOVES REPEAL OF FACILITY STATUTES)**

- §27 REINSURANCE FACILITY ABOLISHED, DAS PHASED OUT**  
--Repeals Code Sections that create the Reinsurance Facility; provides for the Facility's duties and operation; and authorizes the appointment of designated agents.

**SECTION 28 TECHNICAL CHANGE OF REFERENCE FROM JUA TO FACILITY**

- §28 CESSION OF COVERAGES TO FACILITY**  
--Permits cession of certain non-mandated coverages: liability, no-fault, and uninsured motorist coverages for drivers without a safe driver discount. Currently, only coverages that a company is mandated to write may be ceded.

- §29 SEVERABILITY CLAUSE**  
--If any provision of the act is held unconstitutional or invalid, the remainder of the



act remains valid, unless §38-78-110 and 38-78-120, which establish the choice no-fault system are held unconstitutional or invalid, in which case the entire act is invalidated.

**§30**

**EFFECTIVE DATE**

Effective upon the Governor's approval, unless otherwise provided in the act.

## **Summary: Miscellaneous Auto Insurance Reform**

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H. 3421, a bill which addresses several aspects of the auto insurance market, was approved by the House Labor, Commerce and Industry Committee last week. The bill is up for consideration by the full House this week. This summary version is as amended, with the amendment striking all after the enacting words and completely rewriting the bill. Thanks to the staff of LCI for providing this summary also.

### **SECTION (§)**

- §1: NON-ECONOMIC LOSSES/PAIN AND SUFFERING**  
--Prohibits lawsuits for damages for pain and suffering unless the injury reaches the "verbal" threshold or the at-fault person was DUI or guilty of intentional misconduct.  
  
--Establishes a "verbal threshold" of permanent and serious bodily injury or disfigurement; loss of a bodily function; actual economic loss exceeding the policy limits of the at-fault injury; or death.
- §2: MANDATE TO WRITE PHYSICAL DAMAGE COVERAGES**  
--Repeals mandate to write physical damage coverages as of October 1, 1993.  
  
--Requires Chief Insurance Commissioner to compile a comparative statistical analysis of persons for whom physical damage coverage is written and for whom such coverage is denied indicating the data for categories of race, sex, income, occupation, and geographical territory. Requires Commissioner to report annually to the General Assembly.
- §3: RATE FOR POLICIES CEDED TO FACILITY TO BE FACILITY RATE**  
--Provides that the rate for policies ceded to the Facility is the DA rate, or the individual company's filed rate, whichever is greater, to be phased in over a 2-year period.



**§4:**

**FOUR RATE TIERS IN VOLUNTARY MARKET**

--Replaces current 2-tier system (base and objective standards) with 4 tiers:

- (1) **Preferred:** Less than the standard rate. Applies only to drivers with safe driver discount.
- (2) **Standard:** Approved "base" rate in effect on July 1, 1994. Applies only to drivers with safe driver discount.
- (3) **Non-Preferred:** More than the standard rate but less than the substandard rate. Applies to any driver.
- (4) **Substandard:** More than non-preferred rate but less than the Facility's highest rate. Applies to any driver.

--Persons with a 5-year clean driving record must be written at the preferred or standard rate and cannot be ceded to the Facility.

--Requires company or agent to provide written notice to the insured of the tier in which he is written and the reasons he was written at that tier.

--New rates are effective October 1, 1994 for new or renewal policies.

--Prohibits companies from considering race, religion, national origin or economic status in determining the premiums to be charged.

**§5 & 6:**

**PROOF OF INSURANCE FOLLOWING TRAFFIC TICKET**

(Sections 5 and 6 are identical, except that Section 5 amends the Insurance Code, or Title 38, while Section 6 amends the Highway Code, or Title 56.)

--Requires officers to give a driver issued a traffic ticket an insurance verification form, to be completed by the driver and returned to the Highway Department.

**§7:**

**INVOLVE LOCAL LAW ENFORCEMENT WITH UNINSURED DRIVERS**

--Requires Highway Department to contract with local law enforcement to confiscate plates on vehicles operated without insurance or on which coverage has lapsed.

--Provides that the local city, county or municipal governing body of the local law enforcement agency collecting the tag receives 50% of the reinstatement fee and 50% of the per diem fine collected for each license plate.

- §8: RANDOM CHECK OF REGISTERED VEHICLES FOR INSURANCE**  
--Requires Highway Department to select daily a computerized sample of 500 registered vehicles and require them to provide verification of insurance coverage.
- §9: INSURER FILINGS FOR RATE INCREASE**  
--Requires insurers to submit rate filings by October 1, 1994, reflecting rate decreases, if any, attributable to repeal of mandate to write physical damage coverages.
- §10: EFFECTIVE DATE**  
--Provides that this act, unless otherwise specified, is effective on October 1, 1993.

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